IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3763 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KALPESH ALIAS ZINA RAMDAS DHODIA PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3763 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 19.2.2002 passed against him by the Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. It is the case against the petitioner detenu that he has been found involved in three registered criminal offences punishable under Sections 380, 454, 457 IPC etc. Two unregistered offences are also considered by the detaining authority on the basis of the statements recorded of two anonymous witnesses. According to the detaining authority, the activities of the petitioner is found prejudicial to the maintenance of "public order".

3. Legality and validity of the order of detention is challenged by the ld. counsel Mr. A.S.Dave on number of grounds. However, ld. counsel has concentrated his arguments mainly on one ground that the subjective satisfaction recorded by the detaining authority that the alleged activities of the detenu are adverse to the "public order", is not legal and, therefore, the order of detention requires to be set aside solely on this ground.

4. It is submitted that for the sake of argument even if it is accepted that the detenu has been involved in aforesaid cases, even than such activities can be said to be detrimental to the "law and order" and not to the "public order" as defined under the PASA Act. I have considered the submissions of ld. AGP Mr. H.H. Patel for the State. However, in view of the ratio of the decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Ors., reported in 2000(1) GLR P.816, the say of the ld. counsel for the petitioner shall have to be accepted. In the cited case, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offences against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh v/s M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh v/s State of West Bengal, reported in 1970(1) SCC P.98, it has been observed that the stray incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the

maintenance of law and order and not the public order". On facts, when court reaches to a conclusion that the case falls under the maintenance of law and order and not the public order, the subjective satisfaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge, therefore, cannot sustain. Other grounds assailing the validity and legality of the order is not required to be discussed as the order of detention cannot be sustained on the sole ground canvassed by ld. counsel for the petitioner.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 19.2.2002 passed by Police Commissioner, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

27-6-2002 [C. K.BUCH, J]
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